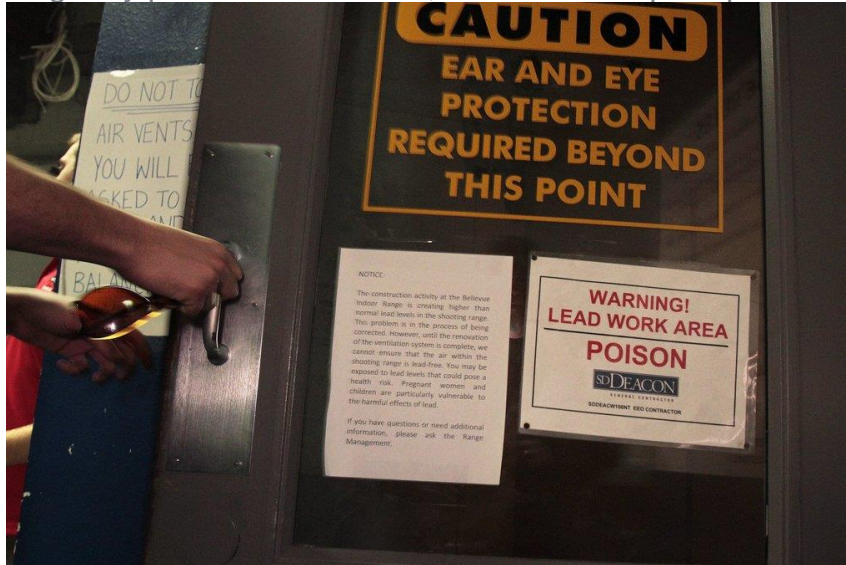


\$503K in fines upheld against L&I for delaying release of lead-poisoning records to Times

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At Wade's Eastside Gun Shop in Bellevue, a sign on the door to the shooting range warns about the dangers of lead exposure. (Mark Harrison / The Seattle Times, file photo)

TIMES WATCHDOG: The records were a basis for The Seattle Times' investigation, "Loaded with Lead," which found that gun ranges across the country put workers, shooters and their family members at risk from lead poisoning.

By [Lewis Kamb](#)

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Washington's Supreme Court has upheld nearly \$503,000 in fines against the state's Department of Labor & Industries (L&I) for improperly delaying the release of more than 5,400 pages of public records to The Seattle Times.

"Loaded with Lead" series



[Read more from The Seattle Times' investigation into lead poisoning at gun ranges.](#)

The [court's 5-4 majority opinion affirms](#) that trial judges may impose penalties for each illegally withheld page under the state's Public Records Act.

The ruling Thursday comes after L&I appealed a King County judge's fines against the agency for its nearly eight-month delay in releasing records about an investigation of lead poisoning at [Wade's Eastside Gun Shop](#) launched in October 2012.

The Times partly relied on these records for its investigation, "[Loaded with Lead](#)," which found that gun ranges across the country put workers, shooters and their family members at risk from lead poisoning.

An L&I spokesman said Thursday the agency was "disappointed" by the opinion, adding the agency and its lawyers hadn't decided whether to ask the high court to reconsider its ruling.

"Since this case occurred, we've provided additional required training to all staff, to make sure public records requests are handled responsibly and timely," L&I spokesman Tim Church added in an email.

The agency has not reprimanded any employees over the costly records delay, Church said.

The 29-page ruling may have broader implications on the state's public-records law by clarifying that government agencies can't improperly delay releasing records under a provision that allows them to first notify third-parties named in such records, said Michele Earl-Hubbard, who handled the case for The Times.

Open-government advocates long have argued that agencies often abuse the third-party notification provision as a way to postpone disclosure or withhold public records.

"The value of this case is that it shows agencies can't just pass the buck to third parties and then sit on a request," Earl-Hubbard said. "The court gave a very strong message today — that delays like this are going to be deemed a violation."

L&I waited more than six months to notify the Bellevue gun shop and its building contractor about The Times' January 2013 request for records, and then gave the businesses another 15 days to challenge the agency's disclosure of the records to the newspaper — "an unnecessary delay," Justice Debra Stephens wrote in the majority opinion.

That ruling upheld the actions of King County Superior Court Judge Catherine Shaffer who said in 2013 that L&I's misconduct "hit The Times in its operational heart" by delaying reporting on "a significant story and of major public interest for our community." The judge noted she set a high penalty "to deter future misconduct by the agency."

On Jan. 31, 2013, The Times first asked for L&I's records about its investigation of a complaint that [two employees](#) working on a remodeling project at Wade's had been overexposed to toxic lead.

In reply, L&I cited an exemption to the state Public Records Act for ongoing investigations, but it failed to provide further explanation, as required.

After L&I later notified Wade's and its construction contractor, S.D. Deacon, about the newspaper's request, the companies sued The Times and L&I to halt release of the records, claiming they contained proprietary information.

Judge Shaffer eventually dismissed those lawsuits, and on Nov. 14, 2013, fined the state \$502,827 for violating public-records law and for not following her order for immediate release of the inspection files. The judge also ordered the state to pay \$43,682 to cover the newspaper's legal costs.

L&I appealed Shaffer's ruling, arguing to the Supreme Court last May that the judge had abused her discretion by calculating the fine on a per-page basis. The agency contended the penalty should have been capped at \$100 a day, or alternatively the judge should have grouped pages of records into categories that would have diminished the amount of penalties.

L&I also had asserted it didn't have to release some of the records earlier because its investigation wasn't complete, among other contentions.

The court's majority didn't buy any of those arguments, ruling L&I had not demonstrated its investigation was like a law-enforcement probe with records that were temporarily exempt from disclosure.

Washington's public-records law "affords trial courts considerable discretion to fashion appropriate penalties for violations of the act," Stephens' opinion said. "Taking into account the facts and circumstance of the case, the trial court here did not abuse that discretion in determining what constitutes a relevant 'record' and imposing penalties on a per page basis."

Chief Justice Barbara Madsen and Justices Mary Fairhurst, Sheryl Gordon McCloud and Mary Yu concurred with Stephens.

In a six-page dissenting opinion, Justice Susan Owens wrote of her concerns the ruling "essentially eliminates any restrictions" on Public Records Act penalties. The dissent was silent about L&I's arguments that it hadn't improperly delayed release of the records.

Justices Steven Gonzalez, Charles Johnson and Charles Wiggins joined Owens' dissent.

“Loaded with Lead” showed how outdated industry-safety standards, reckless shooting-range owners and lax regulation have contributed to hundreds of lead-poisoning cases at [gun ranges nationwide](#).

The Times revealed that regulators have inspected only 201 of America’s 6,000 commercial-gun ranges, about 3 percent, in the past decade.

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